

PATENT COOPERATION TREATY

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From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

PCT

WRITTEN OPINION
(PCT Rule 66)

To:			
CHAS.HUDE AS 33, H.C. Andersens Boulevard 1780 Copenhagen V DANEMARK			
Sagstype PA	J.nr 74660	Ing. TN	
04 OKT. 2004			
AS 400	Til hvem TN	Date of mailing (day/month/year)	01.10.2004
Applicant's or agent's file reference 74660 TN/kp		REPLY DUE within 2 month(s) from the above date of mailing	
International application No. PCT/DK 02/00632	International filing date (day/month/year) 25.09.2002	Priority date (day/month/year) 25.09.2002	
International Patent Classification (IPC) or both national classification and IPC A01C1/04			
Applicant BENTLE PRODUCTS AG			


- This written opinion is the **first** drawn up by this International Preliminary Examining Authority.
- This opinion contains indications relating to the following items:
 - ☒ Basis of the opinion
 - ☐ Priority
 - ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
 - ☐ Lack of unity of invention
 - ☒ Reasoned statement under Rule 66 2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
 - ☐ Certain documents cited
 - ☐ Certain defects in the international application
 - ☐ Certain observations on the international application
- The applicant is hereby invited to reply to this opinion.

When? See the time limit indicated above. The applicant may, before the expiration of that time limit, request this Authority to grant an extension, see Rule 66 2(d).

How? By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66 3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

Also: For an additional opportunity to submit amendments, see Rule 66 4.
For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4 bis.
For an informal communication with the examiner, see Rule 66.6.

If no reply is filed, the international preliminary examination report will be established on the basis of this opinion.
- The final date by which the international preliminary examination report must be established according to Rule 69 2 is: 25.01.2005

Name and mailing address of the international preliminary examining authority:	Authorized Officer
 European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Baltanás y Jorge, R Formalities officer (incl. extension of time limits) Thumser, A Telephone No. +49 89 2399-7991

I. Basis of the opinion

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed"*):

Description, Pages

1-16 as originally filed

Claims, Numbers

1-30 as originally filed

Drawings, Sheets

1/4-4/4 received on 26.11.2002 with letter of 06.11.2002

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
- ☐ the claims, Nos.:
- ☐ the drawings, sheets:

5. ☐ This opinion has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

6. Additional observations, if necessary:

V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**1. Statement**

Novelty (N)	Claims	1, 5-8, 17, 20, 22, 23
Inventive step (IS)	Claims	2, 28-30
Industrial applicability (IA)	Claims	

2. Citations and explanations**see separate sheet**

Reference will be made to the following documents along the procedure:

- D1: WO 01/56361 A (BENTLE PRODUCTS AG ;AHM POUL HENRIK (ES)) 9
August 2001 (2001-08-09)
D2: US-A-5 226 255 (ROBERTSON DAVID W) 13 July 1993 (1993-07-13)

ITEM V

Independent claim 1

Document D1 discloses a seed tape (1) including successively arranged germinating units (1b, 1c), and which further includes at least one carrier strip (1') as well as at least one layer (1'') of biodegradable, gas-permeable material arranged on said carrier strip (1'), whereby each germinating unit (1b, 1c) includes a mixture of carrier (8) and at least one additive (10) in addition to one or more seeds (5), where the layer of biodegradable, gas-permeable material (1'') is flexible and non-woven (see page 5, lines 14 and 15, and also page 12, lines 2 to 4) and that said additive or additives (10) is/are water-absorbing.

Thus, the subject-matter of claim 1 is not novel (Art.33(2) PCT).

It is worthy to mention at this point that expressions like "optionally", "preferably" and other equivalent ones in a claim render irrelevant the subject-matter to which they refer as far as the scope of the claim is concerned. This remark is valid for the most of the claims contained in the present application.

Dependent claims 2, 5, 6, 7, 8, 17, 20, 22 and 23

Furthermore, subject-matter of dependent claims 2, 5, 6, 7, 8, 17, 20, 22 and 23 seem to be disclosed in D1 (for claims 5, 6, 7 and 8: see page 12, lines 10 to 16; for claim 17: see page 10, lines 15 to 18; for claim 20: the expression "can be placed" in claim 20 does not mean anything but that the seed tape is suitable for receiving a "thin separating layer..", being the seed tape disclosed in D1 suitable for that purpose as well; for claims 22 and 23: see page 13, lines 21 to 24) or seem to be usual options for the person skilled in the art in order to solve well-known problems (for claim 2: cotton is a well-known technical option for the person skilled in the art in order to provide a water absorbing material for a seed).

Thus, the subject-matter of claims 5, 6, 7, 8, 17, 20, 22 and 23 is not novel (Art.33(2) PCT), and the subject-matter of claim 2 does not involve an inventive step (Art.33(3) PCT).

Dependent claims 8, 13, 23, 25

Some features contained in dependent claims 8, 13, 23, 25 are referred to as having been cited in claim 1 or some other previous claim, however this is not the case for the following terms: "SAP grains or SAP fibres" in claim 8, "paper layers" and "the layer of non-woven PLA" in claim 13, and "pieces" in claims 23 and 25.

This lack of previous reference to such features leaves the reader in doubt as to the meaning of the technical features to which they refer, thereby rendering the definition of the subject-matter of said claims unclear (Article 6 PCT).

Independent claim 28

Document D1 discloses a method of pregerminating seed tapes as the one of claim 1, where the seed tape (1) is subjected to watering during an initial phase until it has absorbed an amount of water, the water temperature being kept at approximately 11 to 30°C (see page 14, lines 12 to 22), and where the seed tape is subsequently placed in a growth chamber for a reaction period (see page 10, lines 22 to 25).

Difference between D1 and claim 28 would be the maximum content of water absorbed by the seed tape, the pH of the water between 4.5 to 7.5, and the adjustment of the electric conductivity values of the water.

All those features are: a) implicit in a priming process (e.g. the normal value for pH of most of the waters is within the range of 4.5-7.5), or b) well-known usual steps in the process of handling vegetal material (e.g. control of electric conductivity), or c) depending on design factors which lack any inventive step, like the relative weight and proportion of the materials chosen for the construction of a seed tape (e.g. maximum content of absorbed water in respect of dry weight of the seed tape).

Thus, the subject-matter of claim 28 does not involve an inventive step (Art.33(3) PCT).

Dependent claims 29 and 30

**WRITTEN OPINION
SEPARATE SHEET**

International application No. PCT/DK 02/00632

Subject-matter of claims 29 and 30 constitutes a well-known solution to different usual problems with which the person skilled in the art is confronted: X-ray scanning for refusal of defective vegetal material, and removal of defective plants in a sowing or transplanting process.

This would constitute a case of mere juxtaposition of features in respect of the features of claim 1 (see PCT International Preliminary Examination Guidelines, 13.14, c).

Thus, the subject-matter of claims 29 and 30 does not involve therefore an inventive step (Art.33(3) PCT).

Further comments

According to the requirements of Rule 11.13(m) PCT the same feature shall be denoted by the same reference sign throughout the application. This requirement is not met in view of the use of sign 27 in figures 5 and 9.

Contrary to the requirements of Rule 5.1(a)(ii) PCT, the relevant background art disclosed in the document D1 is not mentioned in the description, nor is this document identified therein.